

CAUSES OF NEW ZEALAND FINANCE COMPANY COLLAPSES: A BRIEF REVIEW

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Abstract

During the period 2006 - 2010, 49 finance companies, in New Zealand, collapsed or entered moratoriums, owing investors in excess of \$8 billion, and the fingers of blame continue to point in circles. The blame for this tremendous financial crisis is extensive and a consolidation of arguments is essential for the wider understanding of the topic and to put responsibilities into perspective. A part of this paper is to recognize who can and is being held legally responsible for investors' sake, and also identify parties who have failed their responsibilities. We have highlighted the major issues created by corporate governance being the most direct cause of finance company failure in NZ. We believe in some way these findings will help avoid a similar crisis in the future and resolve a still commonly blurred line in public opinion.

Key Words: Corporate governance, Finance company failure, Regulation

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Introduction

When asking the general public about the causes of the finance company collapses in New Zealand, what do we hear, who do they think is to blame, and what caused it? There is a wide variety of answers, but the most common is – greed! The answer is simple, but not necessarily followed by any further explanation. It's as though the desire for wealth physically manifested itself to devour these companies and investors' money. Are they right, or just a little misinformed? Of course, it's debatable. Other answers given are: the economic crisis, company directors, ignorant investors, financial advisers, government agencies and legislation. That's a lot of people to blame, but then again there is a lot of blame to go around. So, crucial to our understanding of the collapses and the ongoing future potential of the industry we need to know where the blame starts, where it stops and, most importantly, where it belongs.

The situation New Zealand investors have been left with is what one might describe as a 'witch-hunt'. In the common understanding and use of the word, as in the Collins English dictionary, it is "An attempt to find and publicly punish a group of people perceived as a threat, or to blame for an occurrence" (as opposed to the more traditional definition). So, in the modern-day interpretation it is possible that the current media, public and investor search for people to blame may be based solely on the belief of

responsibility and not a factual or legal one – hence their responsibility being perceived and not actual.

On the surface, all aspects mentioned appear to have some blame in this financial predicament, but here are the important questions we will try to answer with a comprehensive study of literature. What caused finance companies in New Zealand to collapse and who can be held accountable for the loss of investors' money?

During the period 2006 - 2010, 49 finance companies collapsed or entered moratoriums, owing investors in excess of \$8 billion. The size of these companies varied from \$1.7million in Kiwi Finance (by deposit size) to \$1.6 billion in South Canterbury Finance (Deep freeze n.d). In many cases these losses destroyed the entire retirement savings of just average, generally hard-working people described as 'Mum and Dad' investors.

The collapsing companies laid blame on the economic conditions created by the Global Financial crisis. But the extent of loss continued to grow and the market sector failed to convince the public that it was a situation that no one had control of or responsibility for. As the finance companies began to collapse, investors began chasing answers and pointing the finger. These fingers of blame continue to point in circles, and slowly the cracks are beginning and some opportunities for blame are opening.

Method and Data

The method used in the process of this paper involves a review of historical studies, publicly available information, media and government reports. We look to the appropriate literature to assist us in determining a primary cause of finance-company collapses from 2006 to 2010. Furthermore, we seek to define and allocate degrees of responsibility to many variables involved in the collapses, including corporate governance, the economy and investors, financial advisers, trustee companies and the Securities Commission. Much existing literature looks at the failures of individual variables in the crisis; this paper seeks to amalgamate these ideas to create greater understanding of the phenomenon, while working to conclude whether the search is simply a 'witch-hunt'. The data sample was collected from the multiple sources mentioned and consists of 63 finance companies that collapsed in the 4-year period. The total funds invested in these companies is in excess of \$8.5 billion from 200,000 investors. There were 8 major companies in this sample that each held in excess of \$300 million in investments and accounted for over half of all invested funds. Of the companies that have estimates of funds returned to shareholders, the average is 47% showing a substantial expected loss in shareholder wealth of 4-5 billion dollars.

Corporate governance

The first group to be on the receiving end of a directional finger-pointing is the directors of the collapsing companies. The first point of call in discussing the responsibilities of directors should be their past behaviour. As we all know, the most accurate predictor of one's future behaviour is one's past behaviour. Harris (2008) highlighted in his review three examples of directors' past activities, which included: Rod Petricevic, founder of Bridgecorp, was involved in the \$250 million failure of Euro National in the 1980s; Michael Reeves of Lombard Finance and Investment Ltd has been found guilty in the past of a breach of the Securities Act 1978; and Kenneth Moses of Nathan Finance Ltd was involved in a failed mortgage-broking firm. Combined, their recent company failures involved putting at risk a total of \$772 million dollars. Although this does not mean they are necessarily responsible for these recent losses, it allows users to see that these directors are not squeaky clean and that it's a justifiable option in the search for accountability. However, as noted by Hammond (2009), some finance companies were likely to have been poorly run. Such a factor may have resulted in their demise, but it is not applicable to all of the collapsed finance companies. Hammond (2009) believes that the collapse of most of the finance companies was more likely a result of the diminished confidence in the finance sector, due largely to the

earlier collapses and negative media attention they attracted.

For those involved in investing in finance companies it's not enough for us to answer that some collapses were caused by poor governance and others may just be a spin-off of the confidence in the economy. I can understand their desire to point the finger at someone and have it stick, so who has failed in governance and who is accountable?

Firstly, we must recognise that finance companies are inherently more risky than mainstream investments, such as registered banks and term deposits, because they are a second-tier finance provider. Finance companies generally give loans to areas of the market that are more speculative, where banks would not lend. Failure of these companies can often be attributed to poor decision-making only with the wonder of hindsight. For example, the second company to collapse – Provincial Finance – according to Wilson, Rose & Penfold (2010), moved from its traditional base of providing finance for mortgages to first-home buyers, into used-car finance in South Auckland. They also decided to outsource the lending decisions, which meant they could not guarantee the quality of the loans. When confidence in the quality of their loan book came into question the number of new deposits dropped, creating expected cash shortfalls in the coming year. Ultimately, the Trustees put the company into receivership to protect investors. The results of decisions like this are due to the risky nature of the business and, although it's possible to blame the directors as they are the ones ultimately responsible for the company, all investors have taken part in the risks of management by investing in the business.

Another more extreme example is Hanover Finance. Directors of Hanover Finance grew the company's investment portfolio from an original mixed base of loans, including consumer finance, into excessive loans in speculative property. Hanover, fronted by news reader, Richard Long, presented to the public that its investments were "first-ranking, secured debenture stock" (McCrystal, 2010). However, the truth was that these investments almost always ranked behind prior charges, and were only ever second mortgagees over the assets. Further issues in the Hanover mess were the high number of related party transactions and hidden loan practices (until receivership) that were in the interests of the directors and not often for the benefit of the company; as well as the excessive dividends being distributed to Mark Hotchin and Eric Watson (the shareholders) that came during the final 2 years of Hanover's life. Finally, when the housing market in New Zealand bottomed out, Hanover suffered an undoing of its own making and their practice of investing long term and borrowing short term forced the company into moratorium. But the directors were not done 'picking the meat from the bones' of Hanover. Under the moratorium, the shareholders had

convinced investors to agree to waive any claims on the dividends already paid to Hotchin and Watson, and say goodbye to more than \$200 million in interest, for the chance of eventual recovery of the sums invested and an immediate cash injection from the shareholders. Of course, this cash never eventuated and the moratorium payments ceased while Hotchin and Watson performed a “magical feat of escapism” (McCrystal, 2010, pg 50) and offloaded the overvalued loan book in a debt-for-equity swap with Allied Farmers.

As mentioned, this is an extreme example of how corporate governance has clearly failed to protect investors, and has contributed to the collapse through excessive risk, and the removing of funds for self gain; in this case, greed seems to be the correct description of a cause. Because of the individual nature of every company that failed, it is beyond the scope of this report to carry out an analysis of all collapsed companies to determine which have been caused by governance. However, we can highlight many of the issues that demonstrate the self-serving nature of directors which clearly has contributed to company collapses.

The loan books of many of the finance companies are held under the group structure in private companies, and therefore have no legal reporting requirements. What this means is that investors are rarely told where their actual investments lie, making it difficult to assess risk (Yahanpath n.d). Harris(2008) stated that often the companies were simply a vehicle for the CEO to carry out his own objectives and “too often, directors were not adequately informed, were misled or failed to take sufficient interest in the affairs of the company”. What this leads us to is that not all

directors are necessarily responsible; in some cases, one member of the governance team has been the mastermind of the activities. Beatson (2009) says that related party transactions were often excessive, and that company funds were usually being used to benefit the shareholders by purchasing assets from the shareholders’ other companies or giving them excessive loans with little likelihood of recovery. However, in most cases, related party transactions can be completely acceptable and to the benefit of investors, as long as they are disclosed and scrutinised by the board and the trustee.

McCrystal (2010) supports that many of these companies had excessive concentration of loans, with up to 80% of some finance companies’ loan books held in one investment, thus creating huge risks tied to the success of one company.

Finally, a major issue within these companies is their treatment of non-performing loans. McManus (2010) says that when loans were failing to be repaid the company would simply roll the unpaid interest up into a new loan. This practice allowed finance companies to declare loan default rates to be very low – sometimes 0%. It also meant that the true nature of these assets was hidden to investors and allowed them to continue to attract investment funds. Often these rolled-up loans were nothing more than bad debts which should have been written off as losses.

There are an exceptional number of ways in which directors can do things wrong but, ultimately, Peart (2008) says that “there is no doubt that governance failed in some finance company collapses” but, in the opinion of Godfrey Boyce (deputy chairman of KPMG), if anything less than a payout of 70% is returned, it’s safe to question the actions of governance.

Table 1. Companies that returned more than 70% to investors

National Finance	IMP Diversified
Provincial Finance	Dorchester
Western Bay Finance	Compass Capital
Property Finance Securities	Mascot Finance
LDC Finance	Strata Finance
Beneficial Finance	Vision Securities
Geneva Finance	Rockforte Finance

Only 14 out of 49 collapsed companies returned this level to investors and these companies account for less than 10% of at-risk funds; ie, around \$800 million of the \$8.5 billion (deep freeze n.d).

The final chance of finding accountability is when directors can be taken to court to test their legal responsibility for wrongdoing and losses to the investor and, if anyone is lucky, not only will they have someone to blame and hold accountable, but they might get some money back.

Since finance companies began collapsing in 2006, the Securities Commission has completed 26 of

50 investigations (Long list, 2011). From this, 35 directors from 14 companies have faced criminal charges.

Marcus Macdonald and Nicholas Kirk of Five Star Group were the first directors to be jailed; they received over 2 years jail each for providing a misleading prospectus (long list, 2011). The directors of the Nathan Finance have been found guilty on 5 charges of breaching the Securities Act 1978 (NZ Herald, 2011). More trials to come include the directors of Bridgecorp for making untrue statements in their prospectus; National Finance, on the same

charge; Capital and Merchant; Lombard Finance and Investments; and Hanover Finance. The directors are likely to face charges, according to the Securities Commission (NZ Herald, 2011).

It's a given that the industry involves risk, however misunderstood by the public, and that this risk is taken by both shareholders and investors for the rewards of interest and other returns. Where legal disclosure has taken place, the directors may have acted unethically but, except for those being charged, there can be no legal fault found here. None are free from blame but the degree to which they deserve that blame varies. However, outside of the legalities there is no one in corporate governance who can be held accountable.

We can find that governance was morally bankrupt, even guilty of breaches of law. This doesn't get money back (or very little) but might give investors someone to blame. It also provides us with information as to the degree of responsibility that governance has had in contributing to the collapse of their specific finance company. But they are only a piece of the puzzle.

Economy and Investors

The excuses of many directors were the economy and investors' actions, so is there any truth in the claim that they caused the collapse of 49 finance companies?

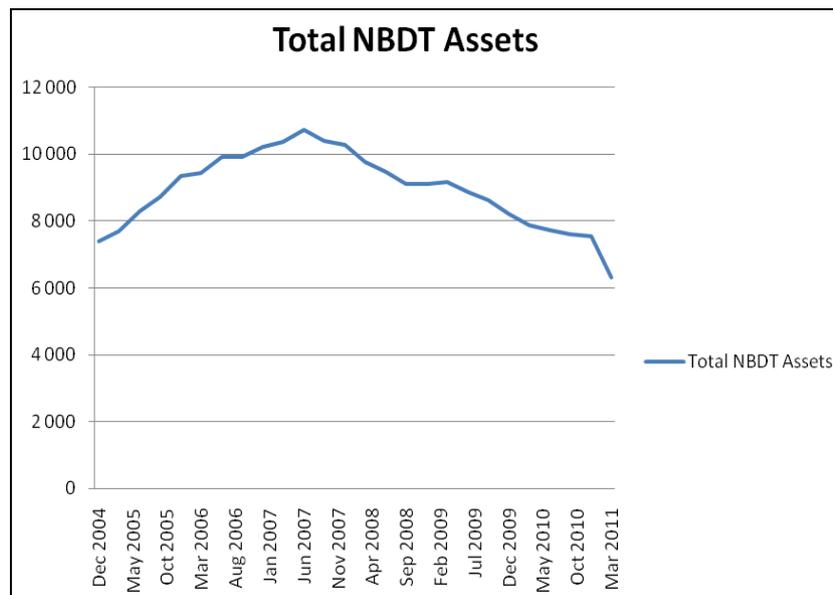
The situation in the early 2000s was defined by a booming economy with near-full employment. Optimism was rife and money was available to invest. During this time, property prices were growing at phenomenal rates and doubled over during the period 2001 to 2007 (New Zealand property, 2011). Investors were returning to the markets after

their gun-shy attitudes brought with them from the 80s and 90s. Many of the baby-boomer generation were, and are, coming up to retirement age and had been looking for places to grow their nest eggs. Carefully targeted returns –higher than banks but not so high as to cause suspicion to the average investor – were on offer from a number of new and growing finance companies.

The RBNZ stated that, since 1998 the non-bank deposit-taking companies (NBDTs), which is the sector dominated by finance companies, had grown at a greater rate than registered banks (RBNZ, 2004). Growth was at a rate in excess of 15 percent. The expansion of this sector continued at an excessive rate shown by Figure A from total asset value of \$7.3 billion in 2004 to a peak of \$10.3 billion in June 2007. From 2004 this figure has given the NBDTs around a 7% share of all investments in New Zealand, up until 2007 when the asset value of finance companies began to decline significantly, to \$6.3 billion in 2011. The growth of this sector at such a rate was an undesirable situation in which companies that were structurally more suited to a small business entity were finding themselves with an abundance of funds available for investing (Securities Commission, n.d).

The RBNZ was recognising the possible threat that this overzealous growth could cause in the future and stated that “experience shows that rapid growth in lending can foreshadow declining credit standards and hence increased risk”. In 2005, the RBNZ reiterated their concern, saying that more than a third of finance companies lend to property developers and experience shows that rapid growth can create greater risk in a slowing economy.

Figure 1. Total NBDT Assets



Source: RBNZ, 2011

During the global financial crisis, the warnings and predictions of the RBNZ came to fruition. Credit began to tighten in the market and loan defaults became more common. This brought down the first 3 finance companies – National, Provincial and Western Bay – because of their lax credit-risk management (RBNZ, 2006). The collapsing housing market in New Zealand had the effect of reducing the value of many of the investments that finance companies were involved in, and the initial collapses and media attention spooked the ‘Mum and Dad’ investors.

The economic climate and involvement of risk-averse investors are both contributing factors to the collapse of many finance companies. It is said by the Securities Commission (n.d) that many investors were involved in this type of business because of the excessive optimism of the growth (bubble) period of the economy and housing market, and were completely unaware of the risks involved, or of the natural business cycle. Worse, they were over-exposed to the risk by a lack of diversification of investment and were not in positions to be absorbing losses in these industries. So began the panic of investors to flee their investments that all of a sudden (in their eyes) had become hugely risky. It’s a well-known fact (and historically proven) that no financial institutions can sustain a consistent run of withdrawals without significant cash-flow issues resulting in receivership. This is called a ‘run on funds’ and, according to Hammond (2009), is a significant contributor to the collapse of New Zealand finance companies. In this situation, after the initial collapses, some investors panic and remove their funds from their investment company. If other investors learn of this they can quickly buy into the panic and then rumours of the company’s weakness and possible collapse become a ‘self-fulfilling prophecy’ (Hammond, 2009). The business model of many of these companies involved borrowing short term and investing long term, which exaggerated the effect of the run on funds (Peart, 2008). This ultimately robbed the companies of the time to realise the profits from their long-term investments. Thus, if a company’s governance was acceptable, and the lending practices were strong enough to survive the economy, they may still have been brought down by fear and ignorance of investors who did not belong in that risk profile. This is shown by the 14 companies that returned significant investment of over 70% of funds even with the fire-sale situation that goes with receivership. Therefore, in some cases, when looking for someone to blame it may be the case that there is no one to look to but the investors themselves. When looking at responsibility it needs to be accepted that the business cycle is natural, both shareholders and investors need to expect periods of peaks and troughs in the economy, and that panic is only another negative influence in the market.

Financial advisers

“Until recently, any person, regardless of their experience or qualifications, was generally free to provide investment advice or financial services to the New Zealand public” (MinterEllisonRuddWatts Lawyers, 2008). This sums up the level of control in the financial advisory industry as severely lacking, and a possible playground for the under-educated and immoral.

Current laws covering financial services are limited and only involve common law, generic consumer-protection laws, and sector-specific legislation like the Securities Markets Act 1978. Some advisers belong to voluntary professional groups which have their own additional codes of conduct and disciplinary procedures (MED, 2007). The Ministry of Economic Development also believes that the current voluntary and sector-specific regulation of financial advisers is failing to ensure accountability in the sector and lacks protection for their clients.

Let’s get things straight – financial advisers are a profit-seeking business people. They don’t work for their clients out of the goodness of their hearts; they are out to make money, and the way they do this is often by commission. Advisers take their cut from the capital invested in companies on their recommendation to clients. Another way they make money is by charging fees for monitoring the investments. So, really, some financial advisers may be hard-working, intelligent and moral individuals, but there is no requirement for those characteristics in the overall industry and these factors definitely do not restrict their earning potential.

Aranyi (n.d) believes that the financial advisers involved with these companies were often no more than commission salesmen who directed all investors they could into the companies that paid the highest commission. These commissions were sometimes two to three times larger than the industry standard. In certain companies, such as Bridgecorp Finance, advisers were receiving 3% commission as opposed to 1% as the standard. A special investigation by the Sunday Star Times (2007) found that “Excessive commissions, free holidays and biased deals are plaguing financial services in New Zealand”. An example of this was Bridgecorp’s points scheme for advisers, whereby points were awarded for those who brought the most funds into the company, and the adviser with the most points would win tickets to the Rugby World Cup.

How does this translate into unfulfilled responsibilities and deserving blame in the industry for finance company collapse? We look to the nature of the industry, as mentioned; these supposed ‘professionals’ are profit-seeking, have few restrictions placed on them by legislation or regulation, and are faced with excessive cash

commissions and prizes. In this case we can only assume greed has overtaken many in this industry.

To draw links between financial advisers and actual causes of company collapse there can only be one tie, and that is that advisers assisted these companies to grow beyond what would have been possible in a prudent and professional investment environment. Advisers cannot be held responsible for the actions of directors. For example, if the supply of funds was restricted by the market, and adequately risk-averse, would directors have had such funds to take such speculative approaches? Jane Diplock, chairman of the Securities Commission, states that many of these companies were unable to adequately handle the rapid expansion of their businesses, and as a result of a failure to recognise the symptoms of the situation, the businesses faltered (Peart, 2008). It appears that advisers could have had a contributory role in some companies' actual demise, but what needs to be proven is that they recommended investment in those companies against the best interests of their clients. If the investments appeared to be in the best interest of the client, then they have little responsibility for company collapse (although the funds have contributed). It is where advisers have been self-serving, and recommended investment in these companies against the best interest of the client that they have become responsible to the client for their losses, and responsible, to a degree, for the actual collapse of the company (as adequately risk-averse investment would not have contributed to their excessive growth).

Under consumer law and the code of ethics of most professional financial advisers, the best interest of the client is firmly imbedded as a primary consideration (IFA, n.d). Some examples of the numerous breaches of these responsibilities are; an elderly couple specified to their adviser that they wanted their investment to be protected for the future purchase of a house, but their nest egg was put in significant-risk investments and lost over 30% (Dominion post, 2008); 200 investors are taking action against financial advisers with 3 firms in Auckland and Christchurch, because the risks of their recommended investments were not explained to them accurately; a group lawsuit is being considered against a Hamilton adviser for similar breaches but comments were restricted for legal reasons. Fifteen Disputes Tribunal cases have been taken by the IFA for breaches of the code of ethics for a variety of reasons, all related to acting in the best interests of their clients, including; giving advice outside their area of expertise, providing recommendations inappropriate to the clients' needs, not providing proper written documentation, failing to make the client aware of the volatility of the investment recommended (IFA, n.d), all making gains for themselves with commission payments.

There is a significant number of financial advisers who clearly disregarded the needs of their

clients in the search for personal gains from finance companies. Their actions contributed to the sector's bubble-like growth and collapse, and they should be held accountable. Others who unwittingly added to this situation by providing inadequate advice cannot realistically be blamed without becoming scapegoats. The likelihood of finding these people accountable, and resulting in returned funds for investors, is slim as many have themselves lost large sums of money. As Gray (2011) says, "None of them have any money", and the current legal action may yet prove difficult.

Trustees

With financial advisers luring people to invest, and directors gambling with other people's money, was there anyone actually monitoring what was going on? Should someone have noticed that things were getting out of hand? A number of organizations had roles in this area. Two on the government side are: The Securities Commission, headed by Jane Diplock, which had responsibilities to investors; and the Registrar of Companies, responsible for the registration of prospectuses. But more direct was the responsibility of Trustee companies. These corporate trustees were responsible for supervising the performance of investors' assets. According to the Trustee Corporations Association (n.d), "Trustees are appointed to monitor the performance of business entities offering debt securities to the public."

A trustee's role includes:

- negotiating the rules (called the trust deed) that the company must adhere to
- monitoring compliance with the trust deed
- monitoring reports from the company
- working as a communicator between investors and directors
- exercising reasonable diligence.

Morrall (2011) claims that trustees have walked away from finance company collapses unscathed and "that certain trustee companies breached their trustee deed obligations by failing to conduct appropriate due diligence of the loan book assets of the finance companies" as well as failing to identify related party transactions. Davies (2007) continues by saying that trustees have a "statutory whistle-blowing duty" and if they think a company has breached its trust deed they are obliged to inform the Registrar of Companies. If they do not, Gray (2011) claims that they've failed this duty and have breached the trust of investors.

Of the five corporate trustee companies in New Zealand, at least 25 of the failed companies used either Perpetual Trust Ltd or Covenant Trustee Company Ltd to oversee their investors' interests. Harris (2008) believes that this level of involvement raises questions about due diligence being carried out by these organizations. Furthermore, Harris (2008) directly states that he believes that these two trustee

companies were slow to detect and respond to the arising issues that put investors' money at such risk. He also continues to explain that the Trust deeds agreed to by these trustees were too weak to provide any real protection to investors, leaving them powerless to prevent any loss had they known of adverse trading situations.

It appears that trust companies have taken a back seat in their role as monitor for the interest of investors and have let the companies have free reign over investors' funds. Davies (2007) explains that this is not that case; it is simply that the powers of trustee companies under the law are very limited when it comes to intervening in the company's actions. If the trustees suspect a problem they can only request examination by the auditors, which can be rejected. Furthermore, a trustee must refer suspected breaches to the Registrar of Companies, but cannot alert anyone else, including investors, due to privacy restrictions.

There are two sides to the coin in the observation of trustee companies. They have taken on roles that they apparently don't have the powers to successfully carry out. It is an incredibly difficult situation for which to lay blame. It appears obvious that the trustee companies had issues that needed to be addressed long before this crisis, and Harris (2008) believes that shortcomings of trustee companies are very hard to identify to prove any accountability.

The only way trustee companies could be held accountable in the collapse of some companies, is if it could be proven that they failed to reprimand directors when breaches of the trust deed occurred. If this was had taken place they may have been able to limit the riskiest exposures the company was involved in, ultimately preventing receivership at a later date. Consider this: if you lend you car to someone who drives in a risky manner and crashes into a guard rail that doesn't do its job, resulting in a mighty plummet, then who is accountable? The driver caused it with their risky driving, so of course they're accountable, but so is the company that installed the barrier. The car didn't have to go off the cliff.

Trustees' true accountability to investors will be tested if they are taken to court in an unprecedented class action against them (Morrall, 2011). This is the only court action against any party involved that could possibly retrieve a substantial amount of investor money as these trustee companies are large and profitable.

Securities Commission

There is much debate about the level of responsibility held by the Securities Commission in the area of collapsed finance companies, and what its regulatory role actually is. Roger Partridge, chairman of Bell Gully, states that the Securities Commission has a wide range of powers to tackle inadequate disclosures by finance companies. He believes that the Securities

Commission has failed to utilize its broad powers to prevent finance companies from issuing misleading information and advertisements to investors (Business Desk, n.d). The Securities Commission said that, under the Securities Act, their powers relate to the offer documents (which are prospectuses and investment statements) and their role is to ensure that these documents accurately disclose "everything they should" (Securities Commission n.d). They also state that they have no power to enforce any duties that failed companies may owe to investors.

A review of the performance of the Securities Commission by Prada & Walter (2009) highlights that the Securities Commission's powers are only available during the period in which a company's offer is open, and it has the power to require amendments to documents and advertising if disclosures are not adequate. They continue to say that the Commission only exercises these abilities on complaints from the public, which often come only after they have suffered financial loss.

It's important to note that the Commission has no powers of investigation during the life of the investment as it is the role of the trustee companies to carry this out.

In general, from Prada & Walter's (2009) research, we see that the Commission had used its powers at a very conservative level, as shown by its lack of comment on market trends and legal issues which could have been highlighted to investors, or testing the boundaries of its powers in the courts, which was rarely done.

Roger Partridge sees that the powers of the Securities Commission were advanced enough that, had it been more proactive in the market, they could have limited the damage done by finance company collapses, although this is strongly rebutted by Diplock as a myth in a statement that the commission had done the job it was able to do under the Securities Act (Business Desk NZPA, 2010).

To consider whether the Securities Commission has performed these duties well enough to avoid blame, we look at Diplock's comments in 2006 when she said that "The standard of disclosure in the finance company sector has improved significantly as a result of the Commission's work" (Hickey, 2010), and in 2007 when she stated that reforms in the sector would make enforcement of investment documents more effective, and confidence and integrity would flourish. From the legal cases against directors discussed earlier we can see that disclosure in many cases remained consistently poor, and Diplock's response is that the regulatory regime was not sufficient and the Securities Commission did not have the tools (Hickey, 2010).

If the Securities Commission had been more proactive in the market and had utilised all of their powers, it's questionable whether the companies involved would have been allowed to continue raising funds from the public. And if the powers it had were

insufficient then why was Diplock pleased with them in 2007? Diplock may not have caused the companies to collapse but the Commission certainly has some accountability in the crisis and its depth, either through complacency or ignorance.

Discussion and concluding comments

The collapse of New Zealand finance companies has been a unique event in New Zealand history. Of course, businesses, and even finance companies, have collapsed before, but never so many so quickly, with such vast amounts of money being lost. \$6.5 billion is still at risk, and it is expected that at least \$4 billion will have been permanently wiped from New Zealanders' pockets and nest eggs.

Finding those who can legally be held responsible is a process that will continue for years to come, with new cases developing and current cases constantly being dragged out. However, the consolidation of many market watchdog responsibilities into the Financial Markets Authority (FMA) will hopefully set a productive and aggressive approach to the regulation of a wild and significantly unaccountable sector in the future.

But for now, the public, the government and, of course, investors are left with the questions that someone needs to answer. Who caused these companies to collapse and lose investors' money?

You, the investor, did. You put too much money behind dodgy directors using very poor business models with no economic endurance, you put it in risky and speculative companies, you trusted people who were giving you free advice (how does that make sense?), and relied on people who actually had no power, or at least no initiative, to use it. And then, when it looked like it was all turning to custard, you pulled everything you could out, like pulling the legs out from under the companies themselves.

Well, that's not really true is it? But when you look at the financial losses involved, if we reflected blame in the same proportion then this would be how it looked. In reality, blame, accountability and causation are all unique to each company that collapsed.

In some situations company governance was clearly poor, taking too much risk and having a belief in a business model that was unfounded. We can blame them and say they caused the company to collapse, but we can't hold them accountable; it's simply an unfortunate inherent risk in the sector. Now, some directors misled, lied and cheated investors, they created liquidity problems in the companies to serve their self-interests, took excessive dividends, broke Trust deeds, and the law. These directors contributed significantly to the collapse of their companies by means beyond just poor management. We can only hope that their accountability will be proven in court.

The events in the economy at the time led to decreasing asset values and tighter credit situations, which created the climate that would weed out good business from bad. It did cause companies to collapse. Just as heavy rain flowing under a poor structure creates a situation, it is the design of the building that determines whether it survives or not.

The actions of investors in creating a run on funds, can't be seen in these cases to be a true cause of most company failures. The large majority of the collapsed companies returned under 70% of the capital invested. If these companies were put in receivership at an appropriate time then there would not have been a need for panicked withdrawals, but in the New Zealand finance industry most of the fear was warranted, and only a select few companies could blame the run on funds.

The growth of the industry was beyond the skill and control of the directors involved, money for investments was abundant and Financial advisers made use of this for their own gain of huge commissions and financial treats. Advisers are a direct cause of the finance company collapses through over-funding business structures and risky companies, allowing and encouraging their practices. These advisers fuelled the fire that was risky business – one can't expect to throw petrol on a fire and claim one didn't burn the house down.

The supervisory roles of trustees and the Securities Commission are simply failures of responsibility. They didn't take prudent steps to fulfill their roles and responsibilities. They have contributed to the collapse of these companies by failing to restrict them to legally and morally acceptable practices.

As a result of this amalgamation of literature we can see that the most commonly involved cause of company failure and unfulfilled responsibilities is self-serving corporate governance. Yet still, finding legal recourse will prove difficult. And still this does not hold true for all involved. Every mentioned area has differing responsibilities due to the different variables involved – loan portfolios, directors, investors, advisers, trustees. All have different failures and different levels of failure in every company. Pinpointing the cause of an individual company's collapse will cause substantial difficulty and yet, in a general approach, to summarise a cause of the New Zealand company collapses is quite simply a witch-hunt.

References

1. Aranyi, T. (n.d). A discredited profession? – Financial advisers. About time! Retrieved on 12 July, 2011. From www.thepaepae.com
2. Beatson, D. (2009). Finance failures – our \$6 billion blame game. Retrieved 19th July, 2011. From www.pundit.co.nz
3. Business Desk NZPA, (2010). Securities Commission hits back at 'nodding off' claims. Retrieved on 7th

- July, 2011. From http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10691547
4. Business desk, (n.d). Securities Commission 'nodded off' on finance companies, says Bell Gully head. Retrieved on 17 July, 2011. From www.sharechat.co.nz
 5. Davies, A. (2007). Securities act hamstrings finance company trustees. Retrieved on 19th July, 2011. From www.soundfinance.com/page/917482
 6. Deep freeze list – Finance industry failures (n.d). Retrieved on 15 June, 2011. From www.interest.co.nz/saving/deep-freeze-list/
 7. Dominion Post. (2008), Investors to sue of finance firm losses. Retrieved on 20th July, 2011 from www.stuff.co.nz/business/245076/investors-to-sue-over-finance-firm-losses
 8. Gray, J. (2011). Law firm seeks funding for class action. Retrieved on 8th July, 2011. From www.nzherald.co.nz
 9. Hammond, S,. (2009). Inquiry into Finance Company Failures. Retrieved May 20th, 2011. From http://www.parliament.nz/NR/rdonlyres/7BB10E9A-ABD5-44C9-BB58-F21247279927/117669/49SCCO_EVI_00DBSCH_INQ_9325_1_A20276_StaceHammond_.pdf
 10. Harris, N,. (2008). Finance company failures – observations of the registrar of companies. Retrieved May 20th, 2011. From http://www.parliament.nz/NR/rdonlyres/16F22058-8DD8-4541-B9A9-064848076239/100892/DBSCH_SCR_4272_6521.pdf
 11. Hickey, B. (2010). Give Diplock the flick. Retrieved on 12th July, 2011. From www.nzherald.co.nz
 12. <http://dictionary.reverso.net/english-cobuild/witch-hunt>
 13. Institute of financial advisers, (IFA), (n.d). Disciplinary disputes tribunal. Retrieved on 19 July, 2011. From <http://www.ifa.org.nz/compdisreso/disciplinary.php>
 14. Institute of financial advisers, (IFA). (n.d). retrieved on 19th July, 2011. From www.IFA.org.nz
 15. Long list of finance firms lined up for investigation and trial. (2011). Retrieved on 25th June, 2011. From www.nzherald.co.nz
 16. McCrystal, J. (2010, May). The Fall of the House of Hanover: North & South Magazine. 290, 40-51
 17. Ministry of Economic development (MED), (2007). Financial advisers – A new Regulatory Framework. Retrieved on 19th July, from www.med.govt.nz
 18. MinterEllisonRuddWatts Lawyers (2008) Financial Services Update. Retrieved on 12th July, 2011. From <http://www.minterellison.co.nz/publications/Financial%20Services%20News%20Alert%20Dec%202009.pdf>
 19. Morrall, A. (2011). Slater and Gordon teams up with Turner Hopkins to launch class action suit targeting trustees. Retrieved on 8th July, 2011. from www.interest.co.nz
 20. New Zealand property market subdued. (2011). retrieved 20th July, 2011. From <http://www.globalpropertyguide.com/Pacific/New-Zealand/Price-History>.
 21. NZHerald Staff, (2011). Nathans Finance directors convicted. Retrieved 19th July, 2011. From www.nzherald.co.nz/business/news/
 22. Peart, M. (2008). Finance company collapses – a sign of poor governance. Retrieved on 15th July, 2011. from www.archivesearch.co.nz/?webid=mgt&articleid=29810
 23. Prada, M. & Walter, N. (2009). Report on the effectiveness of New Zealand's securities commission. Retrieved on 15th May, 2011. From www.sec-com.govt.nz
 24. RBNZ, (2004). Financial Stability Report, October 2004. Retrieved on 12th July, 2011. From <http://www.rbnz.govt.nz/finstab/fsreport/>
 25. RBNZ, (2005). Financial Stability Report, October 2005. Retrieved on 12th July, 2011. From <http://www.rbnz.govt.nz/finstab/fsreport/>
 26. RBNZ, (2006). Financial Stability Report, October 2006. Retrieved on 12th July, 2011. From <http://www.rbnz.govt.nz/finstab/fsreport/>
 27. RBNZ, (2011). Financial Stability Report, October 2011. Retrieved on 12th July, 2011. From <http://www.rbnz.govt.nz/finstab/fsreport/>
 28. Securities commission, (n.d) Report on Disclosure By finance companies. Retrieved on 30th May, 2011. From <http://www.sec-com.govt.nz/publications/documents/bim-08/03.shtml>
 29. Securities commission, (n.d). What powers do we have. Retrieved on 15th May, 2011. From <http://www.sec-com.govt.nz/publications/documents/finance-company-investigations/#2>
 30. Sunday Star Times, (2007). The hidden Sales scandal. Retrieved 21st July, 2011. From www.stuff.co.nz/sunday-star-times/business
 31. Trustee Corporations Association, (n.d). The role of trustees. Retrieved on 12th July, 2011. From <http://www.tca.org.nz/services/the-role-of-trustees/>
 32. Wilson, W.R., Rose, L.C., & Pinfeld, J.F., (2010). Examination of NZ Finance Company Failures: The Role of Corporate Governance. Management online Review. Retrieved on May 20th, 2011. From <http://www.moreexpertise.com/download.php?id=149>
 33. Yahanpath, N. (n.d). Some accountability issues in the Finance company failure in New Zealand: A Brief Survey. Retrieved May 20th, 2011. From http://w3.manukau.ac.nz/aaac/ARA_2010_papers/Yahanpath.pdf